IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1309

T. CARLTON RICHARDSON,

Petitioner,

v.

HOWARD UNIVERSITY, a corporation,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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IF PETITIONER had a *contract* right to a grievance procedure, then clearly the District Court abridged its power under the Summary Judgement Procedure, and the Writ should issue to review this case. Respondent seek's to extend the District Court's ruling beyond its express statement. The District Court held only that the Petitioner had no *Constitutional* claim to a due process

procedure. The lower court never expressed any opinion as to Petitioner's due process rights which inured in his contract of employment. To the contrary, the Transcript of the proceedings reveal that the lower court refused to entertain such a notion. Transcript, at 36. Respondent's failure to meet the substantive issue of the lower court's apparent oversight in concluding that Petitioner had neither a constitutional *nor* contract right to a grievance procedure, emphasizes the need for plenary review of the action below.

The Petitioner has not waived his right to a trial by jury under Rule 38(d) of the *Federal Rules of Civil Procedure*. The period in which such a demand upon his Complaint which he "may" have done, is from the time of filing his Complaint until ten (10) days "after service of the last *pleading*" directed to any issue triable of right by a jury under the 7th Amendment. The *Rules* no where denote a motion for summary judgment as a pleading. See, *Rule* 7. The defect in the purported waiver by Petitioner of his right to trial by jury is that the Respondent never filed an answer! Instead, the Respondent filed the motion for summary judgment which could not, under the *Rules*, be converted into an answer. Thus, Petitioner could not have waived his right to trial by jury, for his demand would have had to be made within ten (10) days of Respondent's answer, which was never filed. Again, the need for plenary review of the action below is indisputable.

If the affidavit of Dean Duncan, an interested party, contained "facts that would be admissible in evidence" as required by *Rule* 56(e), then the District Court could have "divined without a trial" the controversy before it. But Dean Duncan's affidavit contained no "facts" and neither did the affidavit of President Cheek of the

University. In order to stress the Court's need to supervise and regulate the lower court in this instance, the entire affidavit of Dean Duncan is setout:

> "I, CHARLES T. DUNCAN, Dean of the Howard University School of Law, being first duly sworn according to law on oath, depose and say:
>
> "1. That, I became consultant to President Cheek and the Board of Trustees of Howard University on the 1st of March 1974, serving '½ time.' Concomitantly, I was designated by the President as the person to become Dean of the School of Law in Howard University beginning on July 1, 1974. In March of 1974, I became informed of the fact that eight or nine law teacher contracts were due to expire on June 30, 1974. Accordingly, on the 19th or 20th of March, I personally discussed with all of the teachers whose contracts were due to expire the problems inherent in having a new dean making determinations as to the kind of recommendations with respect to contract renewals which should be made concerning these teachers. I explained to them that because I was new to the situation and not then knowledgeable with respect to these individuals, that I would adopt the policy—in order to be fair to them—of offering them one year term appointments in order to afford an opportunity to be in a better position to get to know them and their work. Among these teachers was the Plaintiff, Mr. T. Carlton Richardson who, was fully informed in the premises and who agreed at that time to accept a one year appointment expiring June 30, 1975. Such special appointments are permissible under the Faculty Handbook Page 7, Section 1, B, 1, a copy is attached hereto and made a part hereof. Also attached and made a part hereof are copies of the Personnel Action Sheets showing the Special appointment in accordance with the

understanding between Mr. Richardson and myself."

And, likewise, the affidavit of President Cheek:

"I, JAMES E. CHEEK, being first duly sworn according to law on oath, depose and say:

"1. That, I am President of Howard University;
"2. That, I have received no fromal recommendation from the Dean of the Law School with respect to the renewal or non-renewal of the plaintiff's employment contract ending June 30, 1975."

If these meet the standards under the Summary Judgment Procedure, then the Court should deny the Writ and end the litigation now!

The grant of summary judgment violated the right of Petitioner to trial on the merits of his controversy under the 7th Amendment failing to decide the question of Petitioner's right to due process under his contract of employment, denied his 5th Amendment property rights in the nature of his expectancy for reappointment, and violated the clear mandates of this Court that proscribe the use of summary judgment procedure where the substantive rights of the litigants are infringed upon and the decision is based solely upon the affidavits of interested parties. The inability of the Respondent to face the issues presented in this Petition pinpoints the need for this Court's plenary review of the action below. Indeed, the Petitioner suggests that summary reversal is now in order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

THIS TO CERTIFY that three (3) copies of the Petitioner's Reply Memorandum were mailed, postage prepaid, to the offices of Respondent's attorney, the Honorable Dorsey Edward Lane, at 2935 Upton Street, N.W., Washington, D.C. 20008 on this 23rd day of April, 1976, and that all parties required to be served have been served.

T. CARLTON RICHARDSON, J.D., LL.M.
Attorney Pro Se